

DEPARTMENT OF NATURAL RESOURCES

FOREST MANAGEMENT DIVISION

JORDAN RIVER NATURAL RIVER ZONING

(By authority conferred on the commission of natural resources by section 13 of Act No. 231 of the Public Acts of 1970, being S281.773 of the Michigan Compiled Laws)

R 281.51 Definitions.

Rule 1. (1) "Applicant" means a person who requests on proper forms and via proper procedures, a zoning permit, special exception permit or variance.

(2) "Appurtenance" means a structure incidental to a dwelling including, but not limited to, garages, pump houses, wells, sanitary facilities and electrical service lines.

(3) "Commission" means the natural resources commission.

(4) "Director" means the director of the department of natural resources.

(5) "Dwelling" means a building, or portion thereof, which is designed or used exclusively for residential purposes.

(6) "Dwelling, single family" means a detached building designed for or occupied exclusively by 1 family and containing housekeeping facilities.

(7) "Front" means that side of a lot abutting the water's edge of the mainstream or tributary.

(8) "Lot" means a parcel of land occupied or intended to be occupied by 1 dwelling and appurtenances incidental to it, including such open spaces as are arranged and designed to be used in connection with such buildings.

(9) "Natural river district" means the Jordan river natural river district as described in subrule (1) of R 281.53.

(10) "Reforestation" means renewal of vegetative cover by seeding, planting, or transplanting.

(11) "Setback" means the horizontal distance between any portion of a structure and the water's edge, measured at its closest point.

(12) "Structure" means anything constructed, erected or to be moved to or from any premise which is permanently located above, on or below the ground including signs and billboards.

(13) "Zoning administrator" means the administrator of these zoning rules appointed by the natural resources commission.

(14) "Zoning permit" means a standard form issued by the zoning administrator upon application and declaration by the owner or his duly authorized agent approving proposed construction and use of land and buildings and structures thereon.

(15) "Zoning review board" means a group of 3 or more persons appointed by the commission to act upon requests for special exceptions.

History: 1979 AC.

R 281.52 Purpose.

Rule 2. It is the purpose of these rules:

- (a) To promote the public health, safety, and general welfare, to prevent economic and ecological damages due to unwise development patterns within the natural river district, and to preserve the values of the natural river district for the benefit of present and future generations.
- (b) To protect the free flowing conditions, fish and wildlife resources, water quality, scenic and aesthetic qualities and historical and recreational values of the Jordan river and adjoining land.
- (c) To prevent flood damages due to interference with natural floodplain characteristics by excluding developments which are vulnerable to flood damages.
- (d) To provide for residential and other permitted development that will complement the natural characteristics of the natural river system.

History: 1979 AC.

R 281.53 Boundaries; map; abrogation and other restrictions.

Rule 3. (1) The Jordan river natural river district is that area comprising the Jordan river and its tributaries from its source in section 22, T31N, R5W in Antrim county to Roger's bridge in section 35, T32N, R7W in Charlevoix county and all lands lying within 400 feet of the river's edge.

(2) Certified copies of the Jordan river natural river zoning map shall be displayed in the office of the county register of deeds and in the office of the zoning administrator and shall be filed with the local tax assessing officer and with the state tax commission.

(3) These zoning rules do not repeal, abrogate, or impair any existing easements, covenants, or deed restrictions, nor permit actions prohibited by other statutes or ordinances, including zoning ordinances, applicable to the Jordan river natural river district, except that where these rules impose greater restrictions than found on such easements, covenants, or deeds, the provisions of these rules shall prevail.

History: 1979 AC.

R 281.54 Permitted uses.

Rule 4. The following uses shall be permitted by the owner upon his property within the natural river district, subject to limitations and requirements outlined in these zoning rules, local ordinances and other applicable statutes:

(a) One single family dwelling and appurtenances set back at least 200 feet from the water's edge on a lot at least 150 front feet wide along the mainstream and set back 100 feet with minimum lot width of 150 front feet on the tributaries.

(b) Plats if the minimum setback and lot width requirements in subdivision (a) are met.

(c) Camping and other recreational activities which do not require the construction of permanent facilities.

(d) Operation of watercraft subject to limitations of local ordinances established under authority of Act No. 303 of the Public Acts of 1967, as amended, being SS 281.1001 to 281.1199 of the Michigan Compiled Laws.

(e) Fishing and hunting in compliance with current laws and regulations.

(f) Reforestation.

(g) Normal agricultural activities, if such activities meet the provisions of these rules and the bureau of water management of the department of natural resources determines that such activities do not contribute to stream degradation.

(h) Operation of licensed motor vehicles on dedicated public roads or access roads to private dwellings.

(i) Private footpaths constructed by the landowner of natural materials to facilitate permitted uses.

(j) Private boat docks constructed by the landowner of natural materials and camouflaged into natural surroundings.

(k) Mining and extractive industries beyond 300 feet from the water's edge.

(l) Underground gas and utility lines.

(m) Surface gas and utility lines on lands, or interests in real property continuously owned by the utility from and after January 1, 1971, subject to review and approval by the commission.

(n) Disposal fields and septic tanks in conformance with local county health codes.

(o) Cutting and filling of the land surface except where the high ground water table is within 6 feet of the land surface.

(p) Other uses which are granted permits by the zoning administrator according to R 281.56 and R 281.59.

History: 1979 AC.

R 281.55 Natural vegetation strip.

Rule 5. A strip 100 feet wide on each side of and parallel to the mainstream and 25 feet wide on the tributaries shall be maintained in trees and shrubs or in its natural state, except that dead, diseased, unsafe, or fallen trees may be removed and trees and shrubs, upon approval of the area forester, may be selectively pruned or removed for landscaping purposes or to provide a filtered view of the river.

History: 1979 AC.

R 281.56 Special exception permits.

Rule 6. (1) Special exception permits may be granted to allow uses in the natural river district that are not specifically permitted by R 281.54 where implementation of such uses does not contravene the purposes of these rules as specified in R 281.52.

(2) Application for special exception permits shall be made on forms provided by the zoning administrator.

(3) Upon receiving an application for a special exception permit, the zoning review board at any time prior to rendering a decision thereon shall require the applicant to furnish such of the following information as is deemed necessary by the zoning review board for determining the suitability of the particular site for the proposed use:

(a) A detailed description of the proposed activity or use.

(b) A plan (surface view) showing elevations or contours of the ground, including existing earth fills; generalized vegetative cover map; size, location and spatial arrangement of all

proposed and existing structures on the site; location and elevations of streets, access roads, water supply and sanitary facilities.

(c) Photographs showing existing land uses and vegetation as seen upstream and downstream from the proposed use.

(d) Valley cross sections showing the natural stream channel, streambanks, and high water marks, if any, with indication of locations of proposed developments.

(e) Any other information deemed relevant by the zoning administrator.

(4) Before considering applications, the zoning review board shall give notice by certified mail to all property owners within 500 feet of the proposed use, and to local officials and department of natural resources personnel, including but not limited to: township supervisor, county health officials, county and township zoning officials, soil conservation service, and regional office and natural rivers section of the department of natural resources.

(5) In passing upon applications, the zoning review board shall consider all relevant factors specified in these rules, in the light of the spirit and intent of the purposes as specified in R 281.52.

(6) The zoning review board may require public hearings to be held regarding the application. The zoning review board shall decide on an application within 15 days from receiving the application, except that, where public hearings are held or additional information is required pursuant to subrule (3), it shall render a decision within 15 days of the end of hearings or receipt of the last requested information.

(7) The zoning review board shall attach such conditions to the granting of special exceptions as are necessary to further the purposes of these rules.

(8) A special exception use shall adhere strictly to the terms of the special exception permit.

History: 1979 AC.

R 281.57 Nonconforming uses.

Rule 7. (1) The lawful use of any land or structure existing at the effective date of these rules may be continued, although the use does not conform with these rules.

(2) Repairs and maintenance work required to keep a nonconforming structure or other use, such as a roadway, in sound condition may be made.

Remodeling of nonconforming structures within the confines of the existing foundation and elevations shall be permitted.

(3) A special exception permit shall be granted by the zoning review board when a nonconforming building or structure is damaged or destroyed by fire, flood, or other means, and it may be restored if restoration is started within 1 year from the time of damage. Where there are several buildings or structures which are used together by the landowner as a single operating unit, the value of the part destroyed shall be compared to the value of the total operating unit in determining whether 50% of the value has been destroyed. A nonconforming building or structure damaged by more than 50% of its value may be reconstructed or repaired only if all of the following conditions exist:

(a) The land upon which it is situated is not subject to flooding.

(b) Continued use of a nonconforming building or structure would not lead to bank erosion or other material degradation of the river resource.

(c) The continued use conforms with local county health codes and approval is granted by the local county health department.

(4) The use of a nonconforming structure or land may be changed to a use of a like or similar character, or to a use conforming to the rules of the natural river district.

(5) A nonconforming use of any land or structure may not hereinafter be enlarged or extended without the granting of a special exception permit as provided in subrule (3).

(6) An enlargement or extension of a nonconforming use of up to 50% of the land area or the floor area of a residential structure or public accommodation providing overnight facilities not exceeding 12 units may be approved by the zoning review board when the owner submits to the zoning review board a detailed description of the proposed enlargement or extension together with a site plan showing the location of all new structures or uses, and upon a determination that all of the following conditions exist:

(a) The land upon which it is situated is not subject to flooding.

(b) The enlargement or extension of the nonconforming use would not lead to bank erosion or other material degradation of the river resource.

(c) The enlargement or extended use conforms with local county health codes and approval is granted by local county health department.

(d) The enlarged or extended use does not contravene the purposes of these rules as specified in R 281.52.

(7) Substitution of nonconforming structures with new structures may be made, but the granting of a special exception permit is required to ensure that the changed uses will conform as closely as possible to the purposes of these rules as specified in R 281.52.

(8) If a nonconforming use is discontinued for 12 consecutive months, any future use at that site shall conform to these rules.

(9) A property owner may request the zoning review board to certify the existence of a prior nonconforming use on his property, which certification shall be granted where a use meets the criteria of this rule and the common law criteria of nonconforming uses of the state.

History: 1979 AC.

R 281.58 Variances.

Rule 8. (1) An applicant who is denied a zoning permit or a special exception permit shall have a hearing held in accordance with and subject to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, being SS 24.271 to 24.287 of the Michigan Compiled Laws, upon petition thereof filed with the director within 30 days of such denial.

(2) Upon receipt of a petition for a hearing, the director shall set a date for a hearing on the facts and proposed action, and shall appoint a hearing officer to preside at the hearing. The proposed hearing shall be scheduled not more than 4 weeks after receipt of the petition. The hearing officer shall hear the evidence, prepare a record of the proceedings and a proposal for a decision including findings of fact and conclusions of law.

(3) The hearing officer shall give notice of the hearing by certified mail to the persons named in subrule (4) of R 281.56.

(4) The record of the proceedings and proposal for decision shall be transmitted to the commission and shall be served by certified mail on all other parties to the proceedings not more than 3 weeks after completion of the testimony.

(5) A final decision or order of the commission in a contested case shall be made not more than 8 weeks after the date of the hearing and a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney.

(6) The commission shall prepare an official record of hearing in accordance with section 86 of Act No. 306 of the Public Acts of 1969.

(7) The final decision or order of the commission after a hearing is conclusive unless reviewed in accordance with section 87 or sections 101 to 106 of Act No. 306 of the Public Acts of 1969, being SS 24.287 or 24.301 to 24.306 of the Michigan Compiled Laws.

(8) In determining a final decision in a contested case, the commission shall consider:

(a) The economic effect of the subject property weighed in light of the applicant's entire contiguous holdings and not merely the portion within the natural river district. If the subject portion is the remainder of a larger holding, this fact and a description of the title history shall be included in the hearing evidence.

(b) Increase in flood levels and flood damages that may be occasioned by the proposed use at the site and upstream and downstream from the site, water quality consequences and other factors relevant within the terms of these rules.

(c) Cumulative effect upon the natural river district from potential development of holdings in a legal position similar to the applicant's, if variances are requested and granted for these properties.

(d) Reasonable alternatives available to the applicant.

(e) All other factors relevant to the purposes and provisions of these rules.

(9) In weighing the application for a variance, considerations of public health, safety and welfare shall prevail, unless private injury is proved by substantial preponderance of the evidence to be so great as to override the public interest.

(10) A variance shall not be granted where the commission determines that the requested use will pose substantial hazard to life or property rights either public or private.

(11) Where by reason of the narrowness, shallowness or shape of a lot or property at the effective date of these rules, the lot or property cannot accommodate a building because of the required building setback, variances shall be allowed only upon a consideration of the factors prescribed in subrule (8). Such variances shall provide that the structures shall be so placed as to best meet the spirit and objectives of the natural rivers act.

History: 1979 AC.

R 281.59 Administration.

Rule 9. (1) The commission shall appoint a zoning administrator and a zoning review board to act as its agents to enforce these rules including the receiving and processing of applications for zoning permits, special exception permits, petitions for variances, requests for changes, amendments or supplements, as outlined in these rules, or other matters the commission is required to decide.

(2) A person shall not commence excavation, erection, alteration, or repair for any building or structure or commence a land use until an application for a zoning permit has been made, a site inspection has been completed and a zoning permit has been secured from the zoning administrator. Alterations and ordinary maintenance made on dwellings where total cost does not exceed 5% of the market value of the structure in any 12-month period are exempt.

(3) Application for a zoning permit shall be filed in writing with the zoning administrator. There shall be submitted with all applications for zoning permits:

(a) Two copies of a site plan giving accurate dimensions on either a scale drawing or a rough sketch and containing the following information:

(i) Location upon the lot of all existing and proposed structures.

(ii) Existing or intended use of the structures.

(iii) Generalized vegetative cover.

(iv) Lines and dimensions of the lot to be used.

(b) Evidence of ownership of all property affected by the coverage of the permit.

(c) Evidence that all required federal, state, and county licenses or permits have been acquired or that applications have been filed for the same.

(d) Other information as may be required by the zoning administrator.

(4) One copy of both plans and specifications shall be filed and retained by the zoning administrator and the other shall be delivered to the applicant when the zoning administrator has approved the application, completed the site inspection and issued the zoning permit. To insure that new land uses in the natural river district are in conformance with these rules, the applicant shall display a permit required by these rules face out within 24 hours of its issuance by placing it in a conspicuous place facing the nearest street or roadway and displaying it continuously until the purpose for which issued is completed. Failure to obtain and display a permit is a violation of these rules and subjects each person for whose benefit the permit is required to court action.

History: 1979 AC.

R 281.60 Enforcement.

Rule 10. (1) Buildings erected, razed, altered, moved, or converted or any use of land or premises in violation of these rules are declared to be a nuisance.

(2) Each alleged violation shall be inspected by the zoning administrator who shall order the applicant in writing to correct all conditions found to be in violation of these rules.

(3) Violations of these rules shall be resolved by the appropriate circuit court in accordance with section 13 of Act No. 231 of the Public Acts of 1970, being S 281.773 of the Michigan Compiled Laws.

History: 1979 AC.

R 281.61 Changes; amendments; supplements.

Rule 11. (1) Changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner may be granted where implementation of such changes does not contravene the purposes of these rules as specified in R 281.52.

(2) A local unit of government or a landowner who requests a change, amendment, or supplement to the boundaries or to permitted uses shall have a hearing held in accordance with and subject to sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as prescribed in subrules (2) to (10) of R 281.58.

History: 1979 AC.